IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1063 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARIJAN PALABHAI GOVINDBHAI CHAMAR

Versus

STATE OF GUJARAT

Appearance:

MR BM MANGUKIYA for Petitioner

MR KT DAVE, APP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 24/03/2000

ORAL JUDGEMENT

1. A notice under Section 59 of the Bombay Police Act was issued on Harijan Palabhai Amarbhai Chamar of Sudamada, taluka Sayla, district Surendranagar, by Sub-Divisional Magistrate on August 7, 1999, calling upon

him to show cause as to why he should not be externed from the jurisdictions of district of Surendranager and contiguous districts of Rajkot (Rural), Rajkot City, Bhavnagar and Ahmedabad (Rural) for a period of two years.

2. The proposed externee, petitioner before this Court, was indulging in criminal activities detrimental to public order. Two criminal cases registered against the proposed externee were stated, so also several other incidents of criminal nature, including beating, intimidation, robbery, extortion, etc. were also stated. A reply was given by the proposed externee, wherein he stated that the incidents wherein he is an accused in offences registered against him, the disputes are resolved and that other incidents are vague and frivolous and, therefore, the notice may be discharged. After the reply, externment proceedings were conducted wherein the proposed externee examined four witnesses. Considering the material on record, the externing authority recorded a satisfaction about the activities of the proposed externee being detrimental to public order and for the need to extern him from the districts of Surendranagar and other contiguous districts as mentioned hereinabove in order to prevent him from pursuing his activities. The order came to be passed on August 30, 1999.

3. That order was challenged in appeal by the externee/petitioner under Section 60 of the Bombay Police Act before the appellate authority in the Government. The appellate authority, after considering the submissions made by rival sides, dismissed the appeal. This has given rise to the present petition.

4. The petitioner/externee challenges the order of the externing authority and the appellate authority on various counts. However, Ms. Bela Prajapati appearing for Mr. Mangukia, learned advocate for the petitioner, has restricted her arguments to the ground that the externing authority has externed the petitioner from contiguous districts, but no reasons are recorded therefor. There is no material to indicate for arriving at subjective satisfaction for the need for externing the petitioner from the contiguous districts. The order is, therefore, vitiated and the same may be quashed. In this regard, she has placed reliance on the following decisions:

(1) Saiyad Husain Saiyad Umar v. State of Gujarat & Another, 1985(2) GLR 1045.
(2) Vikram Maya Maiya v. State of Gujarat Another,

1991(2) GLR 1210.

She, therefore, submitted that the petition may be allowed.

4. Mr. K.T. Dave, learned Additional Public Prosecutor, has opposed this petition.

5. Considering rival side contentions and the order of externment, it is amply clear that, according to the notice as well as the order, the activities of the externee are alleged to be within Surendranagar district. The externing authority has not assigned any reasons for externing the petitioner from contiguous districts. What was the basis of passing this order is not disclosed either in the order or even by filing an affidavit in reply. In fact, no affidavit in reply is filed. In absence of any material for externing the petitioner from contiguous districts and in absence of any reasons therefor, if the petitioner is externed from contiguous districts of Rajkot, Bhavnagar, Ahmedabad (Rural), etc., the order would stand vitiated. The petition, therefore, deserves to be allowed on this ground.

6. In view of the above discussion, the petition is allowed. The impugned order of externment dated 30th August, 1999 and the order passed by the appellate authority dated 26th November, 1999 are hereby quashed and set aside. Rule is made absolute.

[A.L. DAVE, J.]

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